

4. He gave \$4,000 cash to Mr. Watson in payment of interest that had accrued during the 2+ weeks since the Debtor borrowed the \$5,000.00.

The company check has a memo saying "Cons. A". It says nothing about repaying a loan.

On cross-examination, the Debtor admitted:

1. That he was not certain whether he gave the \$6,000 NSF check to Mr. Watson at the time of the loan or in a subsequent attempt to repay the loan;
2. His bankruptcy schedules may have been incorrect in reciting that \$10,000 remained owing to Mr. Watson at the time of bankruptcy;
3. That he was not sure whether he owed Mr. Watson, \$6,000, \$8,000 or \$10,000 at the time of bankruptcy.

Mr. Watson's Testimony

According to Mr. Watson, he initially loaned the debtor \$6,000.00 in cash. The loan was made in cash at the Debtor's request because the debtor needed to deposit cash to cover an outstanding \$5,900 check to a furniture dealer in South Carolina. The Debtor "repaid" Mr. Watson about one week later with an NSF check dated 10/23/98 for \$6,000 (Exhibit D-1). However, before Mr. Watson learned that the check bounced, the Debtor borrowed another \$8,000 from Mr. Watson—again in cash.

Mr. Watson testified unequivocally that he was never repaid any part of the \$14,000 which he loaned to the debtor.

Reconciliation of Testimony

The testimony of the Debtor and Mr. Watson cannot be reconciled. Mr. Watson's credibility was unchallenged. His testimony that he loaned the Debtor \$14,000 is consistent with the total debt reflected in the Debtor's schedules. His testimony is consistent with the dates of issuance and negotiation of exhibit D-1. I find his testimony credible that no portion of the debt was repaid.

The Debtor's testimony was not credible. Mr. Donnelly admitted that his recollection was hazy. Also, his testimony did not make arithmetic sense. Under the Debtor's version of the facts, he borrowed only \$5,000 from Mr. Watson almost exactly one month before filing bankruptcy with a promise to repay the debt with \$1,000 interest, plus \$500/week interest. He claims to have paid Mr. Watson \$4,000 cash as interest. There is no combination of these figures that makes the Debtor's testimony internally consistent.

CONCLUSIONS OF LAW

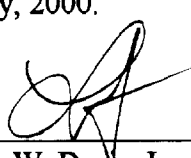
The Trustee alleges that a \$4,000 transfer from the Debtor to Mr. Watson is a "preferential transfer" within the meaning of 11 U.S.C. §547(b). That section provides in relevant part:

"(b) Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property—
(1) to or for the benefit of a creditor;
(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;"

The Trustee must establish, by a preponderance of the evidence, each essential element of a voidable preference under section 547(b). *Travelers Ins. Co. v. Cambridge Meridian Group, Inc.* (*In re Erin Food Servs., Inc.*), 980 F.2d 792, 799 (1st Cir.1992); *In re Ralar Distributors*, 4 F.3d 62, (1st Cir.,1993); *ABB Vecto Gray, Inc. v. First Nat'l Bank of Bethany, Oklahoma*, 9 F.3d 871, 874 (10th Cir.1993) (citing 4 Collier on Bankruptcy 547.21[5], at 547-107 (15th ed. 1995)); *In re Roblin Industries, Inc.*, 78 F.3d 30 (2nd Cir., 1996.).

The first fact which the Trustee must prove by a preponderance of the evidence is the fact of a transfer-- that the Debtor transferred \$4,000.00 to Mr. Watson. Having found that Mr. Watson's testimony was credible, and that the Debtor's was not, I conclude that the Trustee has failed to carry his burden of proof. The Trustee has failed to show by a preponderance of the evidence that any transfer occurred. Therefore, the prayers in Trustee's complaint are denied and judgment is rendered for Mr. Watson.

SO ORDERED this 24 day of Feb ~~January~~, 2000.



Lamar W. Davis, Jr.
United States Bankruptcy Judge
Southern District of Georgia

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